IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.10015 OF 2004

Prakash Chandumal Jeswani
and another. ... Petitioners

Vs.

Shri Hundraj Kishinchand alias
Keshavlal Rohra. ... Respondent

Mr. R.S. Datar for the petitioners.

Mr. Vinod Tayade for the respondent.

CORAM: SMT. RANJANA DESAI, J.

DATED: 22ND MARCH, 2005.

P.C.:-

1. The petitioners are the original defendants in Regular Civil Suit No.332 of 1996, which was disposed of by the Civil Judge, Junior Division, Ulhasnagar, on 17/10/2003. The respondent is the original plaintiff. The suit was decreed. The defendants were directed to deliver vacant and peaceful possession of the suit premises to the plaintiff. The court directed defendant 1 to pay Rs.18,000/- towards arrears of rent and Rs.3,600/- towards water charges to the plaintiff. Defendant 1 was further directed to pay mesne profit at the rate of Rs.500/- per month from the date of filing of the suit till delivery of possession of the suit premises. The defendants have filed an appeal being

Civil Appeal No.129 of 2003 in the District Court at Kalyan. The defendants moved an application for stay of the execution of the judgment and decree passed in Regular Civil Suit No.332 of 1996. By the impugned order, the District court partly allowed the said application. It stayed the execution of the decree impugned in the appeal to the extent it directs the payment of the amount of Rs.3,000/- towards arrears of water charges but refused to stay the decree to the extent it directs the defendant to pay Rs.18,000/- towards arrears of rent and mesne profits at the rate of Rs.500/- per month from the date of filing of the suit till delivery of possession of the suit premises. Hence, the defendants have challenged only that part of the order by which they are aggrieved.

2. Mr. Datar, the learned counsel appearing for the defendants contended that the lower appellate court has only stayed the operative part of the impugned order so far as it directs the defendants to pay Rs.3,600/- towards water charges. However, it has not stayed the direction issued to the defendants to pay Rs.18,000/- towards arrears of rent and further direction to pay an amount of Rs.500/- per month as mesne profit from the date of filing of the suit till delivery of possession of the suit premises. The learned counsel drew my attention to Order XX, Rule 12 (1)(c) of the Civil Procedure Code (for short, "the Code") and contended that the direction to pay mesne profit at Rs.500/- per month from the date

of filing of the suit till delivery of possession of the suit premises without an inquiry is illegal. He, therefore, submitted that this court should modify the impugned order and stay that part of the operative order of the trial court's judgment and decree.

3. So far as the arrears of rent are concerned, in my opinion, the lower appellate court has rightly refused to stay the said direction. So far as the direction to deposit the mesne profit are concerned, the lower appellate court has observed that the trial court ought not to have awarded the mesne profit from the institution of the suit till delivery of the possession. However, the lower appellate court has further observed that the trial court has not committed any gross illegality and, therefore, it has refused to stay that direction. In my opinion, this approach is not right. If the court is of the view that the trial court had committed an illegality, it ought to have stayed the order. The order directing the defendants to pay mesne profit at the rate of Rs.500/- per month from the date of filing of the suit till delivery of possession of the suit premises is not legal in view of the provisions of Order XX, Rule 12 (1)(c) of the Code. Order XX Rule 12(1)(c) contemplates an inquiry and without holding any enquiry into the mesne profits, the court cannot direct the payment of mesne profits. Hence, I pass the following order.

4. The defendants are directed to deposit Rs.18,000/-

towards arrears of rent in the lower appellate court within six weeks from today. On the defendants depositing the said amount, the plaintiff will be at liberty to withdraw the said amount. The defendants shall go on depositing the rent in the lower appellate court and, on such deposit being made, the plaintiff-respondent shall be at liberty to withdraw the same. The direction of the trial court ordering defendant 1 to pay mesne profit at Rs.500/- per month from the date of filing of the suit till delivery of possession of the suit premises is stayed. Needless to say that the deposit of Rs.18,000/- towards arrears of rent and the future monthly rent would abide by the final decision of the lower appellate court. Petition is disposed of in the aforestated terms.

(SMT. RANJANA DESAI, J.)